

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8636 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHENDRAKUMAR N SHAH

Versus

BHAVNAGAR MUNICIPAL CORPN

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Appearance:

MR MJ PARIKH for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 25/01/99

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri H.S. Munshaw for the respondents. With consent of the learned advocates, the matter is finally heard today.

2. The petitioner has been aggrieved by the manner in which respondent No.1 Corporation has decided to consider offers of some of the persons received by

respondent No.1 Corporation in the matter of giving contract of laying of pipeline under a project known as Gaurishankar Pipeline Project. It has been submitted by learned advocate Shri Parikh that the respondent authorities have deviated from the procedure which was to be followed by the respondent Corporation in the matter of scrutiny of tenders. He has drawn attention of this Court to certain undisputed facts which have been incorporated in the affidavit-in-reply filed by respondent No.1 Corporation.

3. It has been stated in para 4 of the affidavit-in-reply of Shri K.C. Lakhani, City Engineer of respondent No.1 Corporation as under:-

"It is stated that as per the procedure, the interested parties were required to provide details and information in two separate covers i.e. cover No. 1 and cover No. 2. Respondent No. 2 states that in cover No. 1, details and information about experience, know-how, equipment etc. were to be furnished while in cover No. 2 the details about the tender etc. were to be provided to the respondent-corporation. It is stated that as per the procedure laid down by the respondent-Corporation, initially cover No.1 was to be opened and information and details about the experience, technical know-how, equipments etc. were to be considered and if the party is eligible for performance of the contract amounting to Rs. 148.00 lacs approximately, then only the cover No. 2 was to be opened on the same day. It is stated that in the instant case when the City Engineer of the respondent-Corporation opened cover No.1 of the tenderers, it was found that only three parties were having sufficient and necessary experience, equipments etc. Hence, the City Engineer of the respondent-Corporation opened cover No.2 of only those three tenderers on 28th September, 1998. Thereafter, remaining four tenderers who were not found eligible and competent approached the Chairman of the Standing Committee of the respondent-Corporation by way of making a representation in writing and the Standing Committee Chairman asked the Municipal Commissioner of the respondent-Corporation to consider the tenders of those four tenderers and do the needful in accordance with the rules and regulations. On receipt of the instructions from the Chairman of the Standing Committee, the

Municipal Commissioner of the respondent-Corporation directed the City Engineer of the respondent-Corporation to open cover No.2 of those four tenders and to do the needful in accordance with the rules and regulations and hence the City Engineer on 29th September 1998 opened cover No.2 of those four tenderers, but so far no final decision is taken and hence the present petition itself is premature and on that ground alone the petition requires to be rejected."

4. It has been submitted by learned advocate for the petitioner that the averments made in the said affidavit-in-reply make it clear that the respondent authorities had deviated from the policy which was depicted in the tender notice published by respondent No.1 Corporation. It has been vehemently submitted by him that it was not open to respondent No.1 Corporation to deviate from the policy simply because the Chairman of the Standing Committee instructed the Municipal Commissioner of respondent No.1 Corporation to consider tenders of some persons who were not even eligible to do the work pertaining to laying of the pipeline. It has been submitted by him that only after due deliberation and careful consideration, the respondent authorities had decided to entrust the work in question to experienced and efficient persons. If the work is entrusted to a person who is not efficient or well experienced, the entire project can be adversely affected and such a thing might not only adversely affect public exchequer but might also deprive the residents of Bhavnagar City of potable water, because drinking water is to be supplied through the said pipeline under the said project.

5. There appears to be much substance in what has been submitted by the learned advocate appearing for the petitioner. The learned advocate for the respondents could not dispute the facts stated hereinabove as the said facts have been taken from the affidavit-in-reply filed by the respondents.

6. In view of the facts stated hereinabove and the averments made in the affidavit-in-reply, it is crystal clear that the respondent authorities have deviated from the procedure laid down by respondent No.1 Corporation in the matter of grant of contract for the purpose of laying of pipelines under the project known as Gaurishankar Pipeline Project. If persons who are not eligible, that is, persons who are not having sufficient means or experience in the work of laying of pipelines are

entrusted with such a work under a contract, the result can be fatal to the public exchequer and therefore it would not be just and proper to permit the respondents from deviating from the policy laid down and incorporated in the tender notice. Upon perusal of the tender notice, it is very clear that, first of all, envelope No.1 was to be opened to verify whether the person offering his services was fulfilling certain requirements laid down by respondent No.1 and if upon opening envelope No. 1, it is found that the concerned person was not fulfilling prescribed requirements, his envelope No. 2 was not to be opened. It is not in dispute that in the instant case envelope No. 2 of the persons who were not having prescribed eligibility or requirement were also opened at the instance of the Chairman. The said action on the part of respondent No.1 is definitely not proper and therefore there is a justification in the grievance ventilated by the petitioner in the petition.

7. It is also pertinent to note that several persons who might not be eligible to enter into the contract might not have sent their offers. If offers of persons who are not eligible to enter into the contract as per the tender notice are considered by the respondent authorities, right of other persons, who had not sent their tenders because of their not fulfilling prescribed requirements or eligibility shall be adversely affected and therefore action of the respondent authorities of opening second covers of those ineligible persons or offerers is definitely discriminatory in nature.

8. Looking to the facts stated hereinabove, it is clear that respondent No.1 Corporation ought not to have opened or considered offers made by persons who were not having prescribed requirements laid down by the respondent No. 1 Corporation for entering into a contract with the Corporation.

9. In the circumstances, the petition is allowed. It is directed that offerers whose tenders, namely, cover No. 2, were opened at the instance of Chairman of the Standing Committee of respondent No.1 Corporation after 28.9.98, shall not be considered by the respondent authorities in the matter of giving contract with regard to laying of pipeline under project named as Gaurishankar Pipeline Project. Needless to say that the respondent authorities shall act in accordance with law and as per advertisement and tender notice issued by them.

Rule is made absolute with no order as to costs.

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